

STOKES
BARTHOLOMEW
EVANS & PETREE

A PROFESSIONAL ASSOCIATION

NASHVILLE • MEMPHIS • MUSIC ROW

424 CHURCH STREET, SUITE 2800
NASHVILLE, TENNESSEE 37219-2386
(615) 259-1450 • FAX: (615) 259-1470
www.stokesbartholomew.com

RECEIVED

2003 MAY -9 PM 3:40

T.R.A. DOCKET ROOM

Direct Dial: 615/259-1492
Direct Fax: 615/687-1507

GUILFORD F. THORNTON, JR.
gthornton@stokesbartholomew.com

May 9, 2003

The Honorable Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

RE: Complaint of Citizens Telecommunications Company of Tennessee, LLC against
Ben Lomand Communications, Inc.

DOCKET NO.

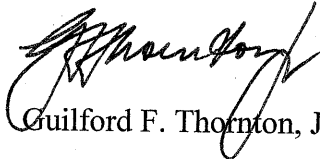
03-00331

Dear Chairman Kyle:

I am enclosing with this letter an original and thirteen copies of Citizens Telecommunications Company's complaint against Ben Lomand Communications, Inc. A copy has been served on counsel for Ben Lomand Communications, Inc.

Should you have any questions or require anything further at this time, please do not hesitate to contact me.

Sincerely,



Guilford F. Thornton, Jr.

cc: Mike Swatts
Gregg Sayre

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

**COMPLAINT OF CITIZENS
TELECOMMUNICATIONS COMPANY OF
TENNESSEE, LLC,**

Petitioner,

Against

BEN LOMAND COMMUNICATIONS, INC.,

Respondent.

DOCKET NO. 03-00331

COMPLAINT

Petitioner, Citizens Telecommunications Company of Tennessee, LLC ("Citizens"), by its counsel, files this complaint against Ben Lomand Communications, Inc. ("BLC") pursuant to T.C.A. § 65-4-117(1)¹ and T.C.A. § 65-5-208(c)². In that regard, Citizens alleges that BLC has (a) illegally offered special promotions to individuals and/or business customers in Sparta and McMinnville without filing such promotions with the Tennessee Regulatory Authority (the "TRA"); and (b) wrongfully utilized drop wire, house cabling on the network side of the interface point, and entrance cabling owned by Citizens to provide service to former Citizens' customers that it has taken away from Citizens. Both of these practices are anti-competitive and harmful to Citizens.

In support of these claims and the relief sought herein, Citizens states as follows:

¹ T.C.A. § 65-4-117(1) gives the TRA the power to "investigate . . . upon complaints any matter concerning a public utility."

² Pursuant to T.C.A. § 65-5-208(c), the TRA "shall, as appropriate . . . adopt other rules or issue orders to prohibit . . . anti-competitive practices."

I. THE PARTIES

1. Citizens is an incumbent local exchange telephone company ("ILEC") as defined in T.C.A. § 65-4-101, serving customers in White County/Sparta, Warren County/McMinnville, Weakley County, Putnam County, and Cumberland County. Citizens is regulated by the TRA pursuant to T.C.A. §§ 65-4-101 and 65-4-104.

2. BLC is a competing local telephone exchange company ("CLEC"), as defined in T.C.A. § 65-4-101, serving customers in Sparta and McMinnville. BLC is regulated by the TRA pursuant to T.C.A. §§ 65-4-101 and 65-4-104. BLC's principal place of business is 1111 Smithville Highway, McMinnville, Tennessee 37110.

3. BLC is a wholly owned subsidiary of Ben Lomand Rural Telephone Cooperative ("Ben Lomand"). According to Ben Lomand's website, which includes a link to BLC, since entering the Sparta and McMinnville markets, BLC "concluded the year with 6,047 access lines, an increase of over 71%." Furthermore, BLC ended the fiscal year with net income of \$573,336, more than twice as large as any previous year." (CEO Report, www.blomand.net/overview/managers.htm).

4. Ben Lomand is a telephone cooperative as defined by T.C.A. § 65-29-102 and as such, it is largely unregulated by the TRA.³ Ben Lomand asserts on its website that it is the "5th largest telephone cooperative in the nation and now serves approximately 36,535 customers." (See www.blomand.net/overview/past.htm).

³ T.C.A. §65-29-130 limits the TRA's regulation of telephone cooperatives to establishment of territorial boundaries, hearing and determining disputes between telephone cooperatives and disputes involving territorial boundaries, and the approval of sales and purchases of operating telephone properties.

II. CLAIMS

A. Unauthorized Special Promotions

5. TRA Rules 1220-4-1-.03 and .04 and 1220-4-2-.06 require a public utility regulated by the TRA to file a tariff, rate schedule or supplement thereto, that explicitly states the rates and charges for each class of service rendered at least thirty (30) days before the effective date of such tariff or changes. TRA Rules 1220-4-1-.03 & .04. and 1220-4-2-.06. Furthermore, the TRA Rule 1220-4-1-.07 states: "Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered or permitted by the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Commission." TRA Rules 1220-4-1-.07.

6. TRA Rule 1220-4-8-.07 requires a CLEC such as BLC to (1) file informational tariffs describing all offered services; and (2) file lists of individual service prices. TRA Rule 1220-4-8-.07(1)(a). Furthermore, although special contracts are allowed under certain circumstances, the "Commission shall be notified of the existence of the contract upon execution, and shall be provided with a written summary of the contract provisions including a description of the services provided." TRA Rule 1220-4-8-.07(3)(b).

7. T.C.A. § 65-4-122 prohibits unjustly discriminatory and/or preferential rates. The above-referenced provisions requiring tariff filings allows the TRA to prevent unjust discrimination and preferential rates.

8. T.C.A. § 65-4-123, declares the policy of this State to foster competition in this State.

9. Pursuant to T.C.A. § 65-4-120, any public utility that violates or fails to comply with any rule “shall in the discretion of the authority be subject to a penalty of fifty dollars (\$50.00) for each day of any such violation . . .” T.C.A. § 65-4-120.

10. Within the last year, BLC has been offering special promotions to customers and potential customers in Sparta and McMinnville, Tennessee without complying with the above-referenced rules of the TRA. This conduct is in violation of the above-referenced statutes and rules, and is anti-competitive.

B. Wrongful Use and Misappropriation Of Citizens’ Drop Wire And House Cabling

11. Pursuant to T.C.A. § 65-21-110, it is unlawful for any person to “damage or obstruct . . . any telephone poles, wires, fixtures or other apparatus or appliances, or to impede or impair the service of any telephone line . . .” T.C.A. § 65-12-110.

12. BLC is without contractual, written or oral permission from Citizens, using the drop wire, house cabling on the network side of the customer interface point, and entrance cabling owned by Citizens to provide service to Citizens’ former customers that BLC has taken from Citizens. On March 14, 2002, Citizens representatives met with BLC to bring this matter to their attention in hopes they would take remedial action. In none of these instances has BLC asked for permission, offered compensation or in any way offered any justification for its disregard for Citizen’s property rights.

13. BLC’s use of Citizen’s property constitutes unlawful trespass, conversion, unfair competition and a violation of T.C.A. § 65-21-110.

14. If BLC is allowed to continue to use Citizens’ property to service BLC’s customers, BLC will be unjustly enriched at the expense of Citizens, and BLC will

unfairly competing with BLC in contravention of the State's policy to foster fair competition in the telecommunications business in this State.

WHEREFORE, Citizens requests that the TRA issue the following relief:

- A. Open an investigation concerning the alleged acts of BLC;
- B. Convene a contested case concerning these allegations;
- C. Terminate any special offerings of BLC found to be in violation of statutes, rules or orders of the TRA;
- D. Impose appropriate sanctions for any violations of statutes, rules or orders of the TRA;
- E. Award Citizens damages as a result of the alleged conduct, if appropriate;
- F. Grant such other and further relief to which Citizens may be entitled, including reasonable attorney's fees and costs.

Respectfully submitted,



Guilford F. Thornton, Jr.
Charles W. Cook, III
STOKES BARTHOLOMEW
EVANS & PETREE, P.A.
424 Church Street, Suite 2800
Nashville, Tennessee 37219
(615) 259-1450

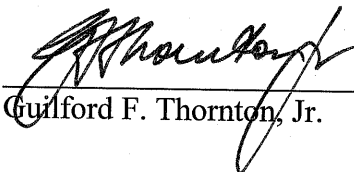
*Attorneys for Citizens
Telecommunications of Tennessee,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by placing it in the U.S. Mail postage prepaid on this the 9th day of May, 2003.

H. LaDon Baltimore
Farrar & Bates, LLP
211 Seventh Avenue, N., Suite 420,
Nashville, Tennessee 37219

The Office of the Attorney General for the State of Tennessee
Consumer Advocate Division
P.O. Box 20207
Nashville, Tennessee 37202



Guilford F. Thornton, Jr.